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In re Application of:
YAMAMICHI, Masato, et al.
U.S. Application No.: 10/573,684
PCT No.: PCT/JP2004/015752
International Filing Date: 18 October 2004
Priority Date: 16 October 2003
Attorney's Docket No.: 2006_0401A
For: ENCRYPTED COMMUNICATION SYSTEM
AND COMMUNICATION DEVICE

DECISION ON PAPERS
SUBMITTED UNDER
37 CFR 1.42

This decision is issued in response to the 04 January 2007 submission of a declaration executed on behalf of deceased inventor Masato YAMAMICHI by his heirs Masami YAMAMICHI, Satomi YAMAMICHI, and Keiko YAMAMICHI, treated herein as a submission under 37 CFR 1.42. No petition fee is required.

BACKGROUND

On 27 March 2006, applicants filed a Transmittal Letter requesting entry into the national stage in the United States of America under 35 U.S.C. § 371. The Transmittal Letter was accompanied by, among other materials, payment of the basic national fee and a declaration executed by the three surviving inventor's and on behalf of deceased inventor Masato YAMAMICHI by his heirs Masami YAMAMICHI, Satomi YAMAMICHI, and Keiko YAMAMICHI.

On 04 January 2007, applicants filed a revised declaration executed by the surviving inventors and on behalf of the deceased inventor by his heirs. The revised declaration includes information that was not present in the original declaration, specifically, the citizenship of the deceased inventor. This declaration is considered herein under 37 CFR 1.42 and 1.497.

DISCUSSION

Pursuant to 37 CFR § 1.42:

"In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain a patent."

Section 409.01(a) of the Manual of Patent Examining Procedure (MPEP) states that the application can also be executed by all of the heirs of the deceased inventor, where no legal representative has been appointed or is required to be appointed by law.

37 CFR 1.497(b)(2) states the following:

(2) If the person making the oath or declaration or any supplemental oath or declaration is not the inventor (§§ 1.42, 1.43, or § 1.47) the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence, and mailing address of the legal representative.

The original declaration filed herein on 27 March 2006 did not include the citizenship of the deceased inventor Masato YAMAMICHI and therefore was not acceptable under 37 CFR 1.497(a)(3).

The revised declaration submitted on 04 January 2007 identifies the deceased inventor and states the inventor's country of citizenship, as required for compliance with 37 CFR 1.497(a)(3). The declaration also indicates the relationship to the deceased (i.e., "heir") of the persons signing on behalf of the deceased inventor, and it provides the heirs' country of citizenship, residence, and mailing address, as required by 37 CFR 1.497(b)(2). In addition, applicants have provided a statement from counsel confirming that the heirs who signed the declaration are "all the heirs of the deceased inventor."

The submission of the declaration executed by all the heirs of the deceased inventor is hereby construed as an indication that no legal representative of the deceased's estate has been appointed and that no legal representative is required by applicable law to be appointed. If this interpretation is incorrect, applicant is required to promptly notify the Office of such and to submit a declaration properly executed by the legal representative of the deceased inventor in response to this decision.

CONCLUSION

Applicants' request for status under 37 CFR 1.42 with respect to deceased inventor Masato YAMAMICHI is **GRANTED**.

Deposit Account No. 23-0975 will be charged the \$130 surcharge for filing the declaration later than thirty months after the priority date.

This application is being referred to the National Stage Processing Branch of the Office Of PCT Operations for further processing in accordance with this decision. The date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) is 04 January 2007.

A handwritten signature in black ink, appearing to read 'RM Ross', with a stylized flourish at the end.

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